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'Negative externality': The violence of capital and language

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Abstract

This article explores the 'normalized' forms of violence (*Objective* and *Symbolic*) which lurk beneath the 'subjective' form of violence- which Zizek (2011) has defined as violence with an identifiable agent (from terrorism to street demonstrations to so-called ethnic conflicts). Combining recent arguments- from the works of green/cultural criminologists (for example, Ruggiero, 2013; Ruggiero and South, 2013), and political economists (Zizek, 2009; 2011; 2014; Harvey, 2011; Varoufakis, 2013; Lazzarato, 2011)- we explore the violence inherent in late modernity's 'governance through debt and fear', showing how post-political bio-politics (Zizek, 2014) constructs the 'other' as a site of administration (through debt, incarceration, sanctions etc.) such that emergent 'insider' and 'outsiders' positionalities determine whom justice is owed, and whom 'harm' is 'externalized'- that is discounted as a necessary condition of international order maintenance.

Introduction

The purpose of this paper is to critique the conflicting logics of international criminal justice apropos of violence. By critically engaging with the (other) conceptualizations of violence we aim to show its 'missing', normalized, components together with the logic of such normalizations. Although there has been elaborate discussion of violence in recent analyses of the international criminal justice system- especially in recent reviews of the prosecution of high profile cases by *ad hoc* UN tribunals and at the International Criminal Court (ICC)- these analyses have emphasized understandings of violence which prejudices its 'subjective' form- which Zizek (2011:4) defines as 'violence by an identifiable agent'- to the detriment of its other underlying forms. These other forms have been given passing acknowledgement as 'background' context. It is time, then, we looked at other two types of violence: *Objective* and *Symbolic*.

In that book of his where Zizek (2011) engages with the harms of capital, he outlines two forms of systemic violence: First, there is 'objective' violence- staged by production and consumption in late modernity (see also, Bauman, 1989; Beck, 1992; Zizek, 2011; Hobsbawm, 1994); secondly, there is 'symbolic' violence- that of the domain of language and being (see also, Zizek, 2011; 2014; Chomsky, 2012). Alongside Zizek, we claim that

1 the subtle, normalised deployment of the other two forms of violence achieves the aim
2 of constructing them as 'externalities' (Hayek, 1973)- the business lingo for the
3 'unintended consequences' of doing business (which occur after the proper legal
4 caveats have been served, so that 'damage' cannot be properly claimed by those to
5 whom it would otherwise be due). This externalization, we further claim, is part of what
6 Zizek (2011) has diagnosed as '*post-political bio-politics*'; a world view in which the goal
7 of capitalist neoliberalism is the efficient management of people, which is achieved by
8 detaching society from all forms of emancipatory thought and struggle so that the 'rule
9 of fear' can carry the day. The purpose of the rule of fear is the deliberate construction
10 of 'insiders' and 'outsiders'; those who are owed and those who owe: There are, on the
11 one hand, those who are placed outside the protective ambit of international justice (in
12 carceral archipelagos, such as Guantanamo bay, or 'concentration' camps for refugees)
13 (Zizek, 2011; Kramer and Michalowski, 2005; Jamieson and McEvoy, 2005; Crelistein,
14 2003) or outside the consumption 'inner cycle' (through debt) (Lazzarato, 2011; Zizek,
15 2014; Moyo, 2009); then there are those who are placed within the protective ambit of
16 law, those whose definition and interpretation of events is the only acceptable form
17 (Chomsky, 2012; Zizek, 2009; Kramer and Michalowski, 2005; Ruggiero and South,
18 2013). Below, the reader will encounter these two camps, in; the analysis of post-
19 electoral violence, and its subsequent prosecution at the ICC, in Kenya; the European
20 governance through debt (Lazzarato, 2011; Varoufakis, 2013; Zizek, 2014); African aid
21 (Moyo, 2009); 'tribal' and 'mineral' conflict (Mamdani, 2001; 1996; Guest, 2004; Nugent,
22 2004) and ecological destabilization across the world (Ruggiero and South, 2013; South,
23 2010; Ruggiero, 2013).

24 The point is that, behind the visible violence which exercises our attention menacingly
25 lurks, other 'invisible' (?) forms of violence, so that the only way of completely ending
26 the one is by ending the others: Zizek is already aware of this when he observes,
27 apropos of the decades of Congolese conflict, that

28 Congo no longer exists as a united operating state; its eastern part in particular is
29 a multiplicity of territories ruled by local warlords controlling their patch of
30 land...each warlord has business links to foreign companies of corporation
31 exploiting the wealth- mostly mineral. This arrangement suits both partners: The
32 corporation gets mining rights without paying taxes and so forth, while the

warlord gets paid... so in short, forget about the blaming the conflict on the 'savage customs' of the local population: Just take away from the equation the foreign high-tech companies and the whole edifice of 'ethnic warfare fuelled by old passions' will fall apart' (2014: 23)

This is similar to the argument for ending piracy in the gulf of Eden: End the theft of that country's sea wealth by European companies, and the edifice of 'militant kidnappers' will collapse (Ruggiero, 2013; Ruggiero and South, 2013). One should extend this claim further and suggest that, in order to properly prevent international crimes, we must also conceptualise their subjective forms (rapes, pogroms, ethnic cleansing...) along the contours of their underlying ideological forms (in the deliberate forms of language through which the elimination of the 'other' is arranged as a 'final solution' (Cohen, 1995; Jamieson, 1999; Mamdani, 2001; Hobsbawm, 1994; Bauman, 1989): Yes, let us look at the pogroms, but let us also look at the system of international values which determines who receives or is denied justice- let us look at the 'exceptionalism' of international justice (Kailemia, 2016; Zizek, 2009).

The article takes the following structure: First, we begin with a brief sketch of the other forms of violence, deploying interdisciplinary points of contact between political economy, linguistics and criminology. This is followed by a discussion of 'objective' violence, showing how it is normalized as part of 'externality'; that is, its construction as a necessary condition of 'order maintenance'. This then paves way for discussion of 'symbolic' violence, showing how the 'other' is not only constructed (as the site of 'management') but also normalized as deserving her plight. There are detours, after each section, respectively looking at the objective violence of the postcolonial state in Africa, and recent events in international criminal justice, including the plight of the *International Criminal Court* (ICC) as the result, and site, of conflicting interests (between allies and rogue states). Before the last, small section offering a conclusion, we revisit the logic of post-political bio-politics, which is the hallmark of today's global governance.

Let us now look, one at a time, at the (other) forms of violence.

Violence; Objective, subjective, symbolic

1 The standard notion of violence is that of acts of crime and terror, civil unrest,
2 international conflicts and so forth. But, beyond the fascinating lure of 'subjective
3 violence', lurks its disturbing background, which births and feeds it. This background is
4 that of 'objective', or systemic, and 'symbolic' violence: Subjective violence is, *in nuce*,
5 just the most visible portion of the triumvirate (see also, Zizek, 2011; 2012). Objective
6 violence is mostly staged in the catastrophic consequences of the 'smooth' functioning
7 of the political economy, from the 'war industry', to the 'fundamentalism of the market',
8 to the displacements of the extractive mineral industry (see also Ruggiero, 2013;
9 Ruggiero and South, 2013; Zizek, 2014; Harvey, 2011). This form of violence takes
10 many forms and operates at different levels. Apropos of international (political) crimes
11 and justice, however, it is most manifest in how society, exercising its functions through
12 the state (and the international system of politics and commerce), distributes public
13 'goods' and 'bads' (Stiglitz, 2012; Lazzarato, 2011); how the state includes or excludes
14 certain of its subjects, from the ranks of those who bear the costs, benefits and/or
15 harms of environmental exploitation, economic boom and/or busts, debt and wages and
16 so on (Zizek, 2014; Lazzarato, 2011; Varoufakis, 2013).

17 Where 'subjective' violence is the 'acted out', the 'performed' form of systemic conflict
18 (Zizek, 2011) 'symbolic' violence is the province of 'language proper', of discourse, of
19 'naming'. Symbolic violence is embedded in what Heidegger (2000) calls 'our house of
20 being'; the milieu which makes man, as part and condition of his habitation, 'man as
21 such'- different from the other 'beasts'. The claim here is that, it is precisely as a being
22 possessed of linguistic capability that man relates to others and to the world around
23 him. This relationship with phenomena around him is contoured by the linguistic
24 worldview he develops or inherits: Relations of subservience and domination of others-
25 and of nature- are reproduced in our habitual speech forms. More than that, there is
26 violence in language as such, in naming- such as when we call a metal 'gold'- as
27 Chomsky (2014) shows- thus opening (what was otherwise a piece of rock) to
28 exploitation, speculation, modification, sale, site of war and so forth.

29 These two forms of violence as related: As Ruggiero and South (2013: 1) also observe,
30 the exploitation of the environment and the global structures of social class and race has
31 been facilitated by a hegemonic discourse under neoliberalism in which

32 Neo-liberal doctrines contradict their very axioms: namely, that the full costs of
33 transactions must be borne by the involved parties. Many economic activities

1 and transactions, on the contrary, exact a significant price on humans and
2 ecosystems, although conventional economists label such price with the
3 reassuring euphemism 'externalities'. In brief, neoliberalism regards
4 environmental harm as accidental, unintentional and external – but also,
5 unimportant (Ruggiero and South, 2013: 1).
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9 What Ruggiero and South are aware of is the role that discourse plays in how
10 positionalities (of victory, defeat, victimization...) are constructed and sustained. We
11 shall revisit the issues later on apropos of the neoliberal agenda, and specifically how it
12 plays a hand in the global allocation of 'goods' and 'bads', including in criminal justice.
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15 Let us, for now, engage with the forms of violence, one at a time.
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17 ***'Negative externalities': Objective violence***

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19 Apropos of ecological harms, White (2013: 255) has noted how 'the most criminogenic
20 agents of environmental harm within a global capitalist political economy are members
21 of the capitalist class, operating within the institutional context of transnational
22 corporations'. His point here is that the state- and the international system which it is
23 part of- is the platform *par excellence* for political, economic, and environmental
24 dialectical conflicts. In these conflicts competing sets of social interests are managed,
25 through use-values involving direct utilization of natural and economic resources for
26 subsistence, habitat, or recreation by citizens. The modern dialectical conflict also
27 involves, as Ruggiero and South (2013) argue, struggles to maximize the 'value' from
28 commodities-such as when we try to 'grow' more animals and plants by application of
29 technologies of husbandry and chemicals in agriculture. Maximization of value is not
30 infinite, however, but is subject to the limitations of demographic growth, the earth's
31 'carrying capacity', but most importantly, the supply-demand alchemy of capitalist
32 production (Harvey, 2011; Stiglitz, 2012). Others have observed how this dialectic plays
33 out at the level of the state, which bears the (simultaneous) twin imperatives of
34 enhancing economic development, on the one hand, and meeting the social needs of its
35 constituents, on the other:
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38 In the first role, state officials seek to increase capital accumulation and tax
39 revenues, in part through fostering greater industrial access to natural resources.
40 Conversely, in their latter role, state agencies are pressured to provide clean air,
41 clean water, and safe communities to their electorates. States thus oscillate
42 under varying sets of social, economic and political pressures between syntheses
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of this dialectic: the economic, in which use-values are largely dismissed, the managed scarcity, in which considerable volatility in state responses to exchange-value and use-value interests occur (Schnaiberg (1993: 1).

The problem for the state here- and important for our 'systemic' notion of violence- is that struggles around (natural) resources in the modern era are primarily variants of the managed scarcity synthesis. These revolve around the limited capacities of most ecosystems to meet both exchange- and use-value needs, on the one hand, and the political-economic power of the competing interest groups, on the other (Ruggiero, 2013). The complexity of the modern struggles (which play out at the state level) are enhanced because most use-value interested citizen groups also depend on wages, which are, in turn, a by-product of the modern *treadmill of production*, which uses profits from environmental extraction to develop more capital-intensive ways of extracting still more resources (Harvey, 2005; Zizek, 2014; Ruggiero and South, 2013). Under this ideology, capital owners and managers attempt to amplify the extraction of value by skewing citizen consciousness in two directions: (1) that resource extraction is compatible with citizen use-values, and (2) when this persuasion fails, that citizens' own exchange-value needs must take precedence over their use-value interests. This is the thesis of Lazzarato's (2011) 'indebted man', where debt is deployed as a mechanism of governance, with the post-independence African state, for example, being pressured by multilateral lenders (and former colonial powers) to accept conditionalities even those which involve the transfer of the consequences of bad policies to its citizens already suffering from chronic scarcity of basic services (Mamdani, 1996; Wrong, 2009; Moyo, 2009). As Lazzarato observes,

'The debtor-creditor relationship...intensifies the mechanisms of exploitation and domination at every level of society, for within it no distinctions exist between workers and the unemployed, consumers and producers, working and non-working populations, retirees and welfare recipients. Everyone is a debtor, accountable to and guilty before capital. Capital has become the great creditor, the universal creditor... Through the public debt entire societies become indebted. Instead of preventing 'inequalities', the latter exacerbates them (2011: 8).

What Lazzarato is teaching us is how, in today's global capitalism, debt works across a whole range of social practices and levels, from a nation state down to an individual. As

1 part of the hegemony of neoliberalism (Zizek, 2014), the logic of market competition is
2 extended to all aspects of social life, so that, for example, health and education- or even
3 political decisions (voting) themselves- are perceived as investments made by the
4 individual in his or her own dimension as an investor. The collective indebtedness,
5 sometimes out of arrangements entered between ruling elites and multilateral lenders,
6 are taken as collective entrepreneurial decisions by the citizens; national growth (in
7 GDPs etc.) signals good investment decision-making (and is rewarded as such with
8 more debt), while poor growth is an investment offence (punishable by downgrading of
9 'ratings', or the rollback of investment in social safety nets).

10 Along the same veins, the absence of 'subjective' violence, cue the absence of any forms
11 of picketing-against depressed wages or bad investment decisions by national elites- is
12 rewarded by high ratings in 'ease of doing business' or 'transparency' indices, so that,
13 presently, the most draconian regimes (Ethiopia, Rwanda, China etc.) are also
14 increasingly being held up as totems of good management to be envied and emulated.
15 (We are daily reminded how much space the developing world needs to yield to
16 international overseers- like the *IMF*, *Transparency International*, and the like, all
17 located in western capitals- in order to get a fairer rating- the likes of Moody's, Fitch- all
18 located in western capitals: The easiest way for an African leader to be invited to Davos
19 or the G7, as an 'observer', is not to provide clean water, or to widen democratic space,
20 but to maintain a 'stable outlook', perhaps with their presence in these revered summits
21 signalling wise decision-making by the subjects they oversee?)

22 Alongside this logic, poverty is a diagnosis of poor decision-making, by the
23 entrepreneur-of-the-self, so that it is right to punish this failure through the EU's
24 'austerity measures' (in the case of Greece in Europe) or *International Monetary Fund*
25 IMF's 'structural adjustment programmes' (in the case of Africa). In both instances, the
26 ground is already rigged, to use a familiar metaphor, in favour of the one with
27 something to show (cue capital) in regard to the endless rounds of entrepreneurship-of-
28 the-self-appraisals (see also, Lazzarato, 2011; Varoufakis, 2013). In the recent round of
29 'austerity Europe', this appraisal of entrepreneurship means, for example, that the
30 worker is no longer perceived as merely labour power, but as personal capital making
31 good and bad 'investment' decision as s/he moves from job to job therein in/decreasing
32 his/her net capital worth. The implication of this is that risks (financial, ecological, and
33 psychological) are outsourced from the company and the state (or insurance and
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1 banking institutions) to the individual: Social protections are individualized (privatized)
2 to align them to market norms, and thus they are no longer guaranteed, but are
3 conditional on the performance of the individual whose life is opened up for
4 assessment. As Žižek (apropos of Lazzarato, 2011) observes;
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7 As individuals become poorer through the shrinkage of their salaries, and the
8 removal of social provisions, neoliberalism offers them compensation through
9 debt, and the promotion of shareholding. In this way, wages or pensions
10 (deferred salaries) don't rise but people have access to consumer credit and are
11 encouraged to provide for retirement through personal share portfolios; people
12 no longer have access to housing but have access to housing credit/mortgage;
13 people no longer have access to higher education, but can take out student loans;
14 mutual and collective protections are dismantled but people are encouraged to
15 take out personal protections (2014:42).
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24 It is easy to relate this logic to the 'subjective' violence for which some African citizens
25 have been indicted at the International Criminal Court: In the case of Kenya, to take one
26 example, the (post-electoral) violence of 2007/08ⁱ, may have been co-perpetrated by
27 the indicted 'Ocampo Six'ⁱⁱ, but this was only possible because of systematic assault on
28 the mechanisms of governance of the Kenyan state, by a rentier economy presided by
29 the Kleptocracy of Arap Moi (who ruled under a single party for 24 years). This rentier
30 arrangement, as Warrah (2008) illustrates in *'Missionaries, Mercenaries and Misfits'*, also
31 involved or occurred against the backdrop of micromanaged exchange-rate
32 mechanisms, systematic dismantling of industry, decline in prices of primary
33 commodities in international markets, collapse of the tourism industry from western
34 imposed 'travel advisories' and so on. The impact of this toxic collusion/coincidence
35 was damaging the capacity of the state to provided basics services, culminating in
36 precisely the violence which characterises the standard notion of 'state collapse'.
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48 ***'Negative externality' and the post-colonial state*** 49

50 In essence, majority of the post-colonial states, have been brutalised by neoliberal
51 policies pursued by the IMF and the 'World Bank', so that, slowly, the new economies of
52 the post-colonial state, have not only 'fallen away' from the international system of
53 'trade' – becoming basket cases of aid dependency, as Moyo (2008) argues in 'dead aid-
54 but have also become 'management' burdens; candidates for absorption into the debt
55 economy (see also, Žižek, 2012). In this management fiasco, the IMF, WB, and a handful
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1 of politicians, now decide for everyone which resources should take priority, which part
2 of the national income should go into servicing which debt and so on. As such, the debt
3 economy has deprived many citizens of political power, which had already been
4 diminished through the concessions of colonial-era systematic dismantling of
5 communal institutions (see, for example, Anderson, 2005; Nugent, 2004; Mamdani,
6 1996). As Nugent also shows, the conflicts ravaging Africa (from the Congo wars, to the
7 'blood diamond' conflicts in Liberia and Sierra Leone) should be read against the
8 background of the systematic dismantling of community networks by the colonial
9 economy: The violence which has characterised the past 50 years of post-colonial
10 Africa's experience, Nugent argues, is the result of systematic disenfranchisement,
11 because

20 Decolonization was such a fraught affair because it involved a transfer of power,
21 at two levels simultaneously: That is, from European officials to African
22 politicians and from chiefs to locally elected leaders. The electoral principle,
23 which had never found favour amongst the colonial authorities, was now
24 formally enshrined as the basis on which the right to command
25 rested...Throughout the first half of the 20th century, chiefs had been the most
26 trusted intermediaries of the colonial regimes, only to find themselves jilted at
27 the alter of independence' (2004: 110).

35 The implication of this 'jilting' is not only that the post-colonial state inherited
36 weakened community structures of command, but that such inherited structures were
37 infused with the colonial apparatus of 'divide and rule', involving governance through
38 patronage and terror by the post-colonial elites (See also, Mamdani, 2001; Guest, 2004):
39 A common pattern of the post-colonial state, Nugent tells us, was the systematic
40 dismantling of devolved government in favour of centralized control using peripheral
41 cronies installed by the power of the day. In tandem, the post-colonial indigenization of
42 the economy was also its ethnicization, so that the fertile lands, the mineral rich regions,
43 and important arms of government and the economy (tourism, military, policing,
44 agriculture) were in the control of the 'tribe' in power. In 'citizen and subject' Mahmood
45 Mamdani (2006) renders the post-colonial state as a form of decentralized despotism',
46 exercised by chiefs who owed their allegiance to their new masters with the same zeal
47 they displayed for the colonial masters.

1 This reading is important for two reasons: First, because the survival of the
2 'decentralized despot' was guaranteed not by the allegiance of those he ruled, but by the
3 mercies of the appointing authority (in the state/tribal HQ), he was more mindful of the
4 welfare of the centre than the periphery. This also meant that any challenge to the
5 centre was confronted at the periphery and *vice versa* (with some chiefs exercising
6 more power than cabinet ministers in the regimes of Kenyatta and Moi, in Kenya)
7 (Mamdani, 1996; Guest, 2004). Secondly, with the local despots seized of the business of
8 'putting out fires', the elites at the centre could carry out the business of dismantling
9 anything that stood in the way of 'masters abroad' (Nugent, 2004; Moyo, 2008). The
10 implication is that as the states grew their GDPs (and earned more foreign exchange)
11 these benefits did not truckle down to the peripheries, so that in most states there are
12 still no roads outside the capital cities (Warrah, 2008; Nugent, 2004; Guest, 2004).

13 Such export of value, where the finance accumulated and was later transferred outside
14 the countries (through tax evasion or use of offshore accounts to hide loot by the
15 political elite) not only tilted the economies in favour of exports of primary
16 commodities, but it also 'politicised the economic and economised the political' (Guest,
17 2004): In order to guarantee trade, industrialists invested in the rentier economy by
18 'buying' the support and/or allegiance of politicians and politicians who, in turn, looted
19 the more, lining the pockets for the next battle for political survival. Thus, to be in
20 politics was about becoming wealthy (as opposed to public service) and to be wealthy
21 became participating and surviving in politics.

22 There is wonderful documentation of the 'shackled continent' (2004) resulting from
23 this, again itemizing the precise links between post-colonial corruption and the creation
24 of zero-sum politics. There are even critical readings of the links between the pre-
25 colonial, the colonial and post-colonial state-building and genocides, such as the
26 wonderful ethnographies by Jamieson (1999) on 'genocide and the social reproduction
27 of immorality' and Mamdani's (2001) account of 'the victims who became killers' in the
28 Rwandese genocide. A similar reading is appropriate apropos of Kenya which, as we
29 claimed above, has developed under the forces of a post-colonial rentier economy in
30 which on the one hand, its political elites have looted just about anything (including
31 engaging each other in political tuff wars), but in which, on the other hand, the presence
32 of the state has mostly been felt only when the machinery of government is crashing

1 revolt (through a dreaded 'provincial administration' apparatus of chiefs and the police)
2 (See also, Warrah, 2008; Guest, 2004; Nugent, 2004; Wrong, 2009)ⁱⁱⁱ.

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4 In repetition, the notion of objective violence is not a new theme: Marx was already
5 aware of it when, in *The communist manifesto*^{iv}, he highlighted the 'mad dance of
6 capital'; how, for example, the self-enhancing circulation of capital (in today's meta-
7 reflexive speculations of 'derivatives', 'futures', 'IPOs'...) can also happen against
8 concerns for human or environmental harms. The point here is not so much about
9 economic speculation as a form of violence (although there are many instances in which
10 that is the case), but how the normalization of this speculation (and other forms of
11 value- extraction) are distanced from their impact; how bloody conflict, for example, is
12 conveniently explained as 'tribal rivalry', or 'spontaneous' reaction to electoral theft,
13 without acknowledging the connections of this spontaneity or 'tribe', to the schism in
14 the economy.
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17 In other words, the problem of systemic violence is that, as a hidden and normalized
18 form of violence, is not easy to render in the 24hr newscasts (especially when the media
19 conglomerates have a stake in the conditions which give rise to the reportable-violence)
20 (Chomsky, 2012). Or, as Zizek also argues
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24 The fundamental systemic violence of capitalism, much more uncanny than any
25 direct pre-capitalist socio-ideological violence...is no longer attributable to
26 concrete individuals and their 'evil intentions', but is purely objective , systemic,
27 anonymous... One can experience this gap in a palpable way when one visits a
28 country where life is obviously in shambles. We see a lot of ecological decay and
29 human misery. However, the economists' report that one reads afterwards
30 informs us that the country's economic situation is 'financially sound'- reality
31 doesn't matter, what matters is the situation of capital...'
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33 34 35 ***Symbolic violence: 'Corporate social responsibility'***

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37 As we saw at the introduction, the (international) discourse on rights and wrongs, law,
38 justice is contoured by language, so that international institutions underwritten by
39 notions of values derived from one culture may not necessarily engage with meanings of
40 acts when committed within another culture. More than that, the very framework of
41 international institutions, including the ICC, and international human rights laws for
42 that matter, may emphasize the meanings of events which are compliant with the
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interests of dominant cultures (even where such are packaged as ‘universal values’).

Chomsky is aware of this when he points out how

The terms of political discourse typically have two meanings. One is the dictionary meaning, and the other is a meaning that is useful to serving power- the doctrinal meaning. Take democracy. According to the common-sense meaning, a society is democratic to the extent that people can participate in a meaningful way in managing their affairs. But the doctrinal meaning is different- it refers to a system in which decisions are made by sectors of the business community and related elites. The public are to be only ‘spectators of action’ and not ‘participants’ (2012: 64).

Chomsky’s reading of the (symbolic) power of language is important not only because of the contact it makes with the aforementioned emergence of the individual as the site of risks (Lazzarato, 2011; Žižek, 2014), but because he develops the motif further into international relations showing how, for example, notions such as ‘justice’ and ‘peace’ acquire different meanings as they transit the refracting lenses of international power games:

Take defense against aggression, a phrase that’s used- predictably- to refer to aggression. When the US attacked South Vietnam, the liberal hero Adlai (Stevenson) explained that we were defending South Vietnam against ‘internal aggression’- that is, the aggression of the south Vietnamese peasants against the US air force and a US- run mercenary army which were driving them out of their homes into concentration camp, where they could be ‘protected’ from the southern guerrillas (2012: 64).

There is similar critique of ‘American exceptionalism’ apropos of international law- and very useful for the purpose of analysing symbolic violence- which is perhaps best rendered by the narrative below.

Necessity of harm; the ‘negative externality’ of allies

In June 2015, the ICC sensationally sought the arrest and repatriation of Sudan’s Al Bashir- the first sitting head of state indicted for war crimes and crime against humanity- during an *African Union Heads of States Summit* in South Africa^v. Despite a court order for his detention, however, the South African government refused to arrest and hand-over Al Bashir, thus breaking its obligation as an ICC member. South Africa’s

1 principle argument was that the ICC, in calling for Bashir's arrest, had intentionally
2 placed itself in conflict with the 2014 resolution of AU that no sitting head of state shall
3 be summoned to ICC hearings- and an even older grant of immunity to heads of states
4 within territory of the AU membership. During the ensuing drama the US state
5 department expressed its frustration in South Africa's reluctance to arrest Al Bashir.
6 The US State Department spokesman John Kirby said that while the U.S. is not a part of
7 the ICC, it strongly supports efforts to hold accountable the perpetrators of genocide
8 and war crimes. As such, "In light of the atrocities in Darfur, we call on the government
9 of South Africa to support the international community's efforts to provide justice for
10 the victims of these heinous crimes^{vi}," Kirby said in a statement.

11 Critics of the US position contrasted this enthusiasm for the arrest of 'yet another
12 African' with the US criticism of any involvement of the ICC in the Israeli bombings of
13 Gaza, which a UN report has described as 'possible war crimes^{vii}'. No surprise then that
14 the South African government issued a rejoinder to the US State Department, pointing
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'The ANC holds the view that the International Criminal Court is no longer useful
for the purposes for which it was intended. Countries, mainly in Africa and
Eastern Europe ... continue to unjustifiably bear the brunt of the decisions of the
ICC, with Sudan being the latest example.'^{viii}

The ANC's criticism of the ICC is in line with the African Union's (AU) which has
consistently highlighted that, since its inception, the ICC has only prosecuted Africans.
The AU sees this as a betrayal of the spirit of the Rome statute- and a slap in the face on
the vain hopes of those like Kofi Annan who viewed the ICC as a 'triumph of humanity'
(Zizek, 2014: 333)^{ix}. Prime Minister Hailemariam Desalegn of Ethiopia, a former AU
chairperson, has claimed that the ICC process 'has degenerated into some kind of race
hunting'^x. Kenya's Kenyatta- a co-indictee with 5 others on crimes against humanity
committed in 2007- has gone further to claim that

'The ICC has been reduced into a painfully farcical pantomime, a travesty that
adds insult to the injury of victims. It stopped being the home of justice the day it
became the toy of declining imperial powers'^{xi}.

1 These sentiments are in line with wider criticisms of the ICC, including that by the
2 influential *Black Agenda Magazine*, which pointed out that:
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4 It's a travesty of justice that the ICC only indicts Africans, but even more
5 importantly, the International Criminal Court also only indicts those politicians
6 that get on the wrong side of the United States and the former colonial powers in
7 Africa. The ICC is a tool of U.S. foreign policy, an instrument of neo-colonialism^{xii}
8 (Black Agenda Magazine, 2013).
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10 Criticism of US double standards would appear to be justified^{xiii}: As Chomsky's (2012)
11 points out, the US has actively vetoed any attempt by the *Palestinian Authority* to accede
12 to full ICC membership- and recently threatened to withhold aid to Palestine should its
13 government refer Israel to the ICC^{xiv}. (Analysts have pointed out that any cut in U.S.
14 funds would be deleterious to Palestinian self-rule, by plunging already struggling local
15 institutions in the West Bank and Gaza into a struggle to survive^{xv}.) U.S. President
16 Barack Obama's administration has repeatedly said it does not believe Palestine is a
17 sovereign state and therefore does not qualify to be part of the ICC. Apropos of
18 Palestine's application to the ICC, Lindsey Graham, part of a seven-member delegation
19 of US senators visiting Israel, Saudi Arabia and Qatar, said existing U.S. legislation
20 'would cut off aid to the Palestinians if they filed a complaint' against Israel. At a news
21 conference in Jerusalem, Graham called the Palestinian step "a bastardising of the role
22 of the ICC' which is 'incredibly offensive.'^{xvi} Graham also warned that
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41 'We will push back strongly to register our displeasure. It is already part of our
42 law that would require us to stop funding if they actually bring a case.'^{xvii}
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45 Traditionally, the US has been critical of any contact between Palestine and the ICC,
46 especially since majority of UN member states voted to recognize Palestine as non-
47 member state in 2010. (In 2014 the US actually vetoed the UN Security Council
48 Resolution 242, which obliged Israel to commit to a deadline for withdrawal from
49 occupied territories.)^{xviii} Unsurprisingly, when Palestine referred Israel to the ICC in
50 2015, the US and Israeli opposition was uniform: Israel, a key ally on 'the war on terror',
51 needed to be protected and encouraged, not 'threatened'. As Netanyahu put it:
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1 'At a time when terrorism is attacking the free world, this step will hurt
2 international efforts to fight terrorism... The decision by the prosecutor at the
3 International Criminal Court ... gives legitimacy to international terrorism"(The
4 Jerusalem Post, 2015).
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8 This was echoed by Diane Feinstein, the US senator from Californian, who pointed out
9 that
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11 'The United States must aggressively oppose this court each step of the way,
12 because the treaty establishing an International Criminal Court is not just bad,
13 but I believe it is also dangerous... None of us would like to see a court that
14 frivolously prosecutes Americans or which acts with politics, not justice as its
15 motivating force'^{xix}.
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23 Similarly, in a debate in the US senate, Rand Paul claimed that groups such as the ICC
24 'that threaten Israel cannot be allies of the US^{xx}' and that the US senate should 'continue
25 to do everything in its power to make sure this president and this Congress stop
26 treating Israel's enemies as American allies'^{xxi}. Feinstein's and Paul's assessment of the
27 ICC's mandate is not unique; it represents the paradox of US' opportunistic exception-
28 where the ICC is to be opposed when it threatens the foreign policy interests of the US,
29 but supported when its success does not threaten the same interests (Zizek, 2009;
30 2014; Chomsky, 2014; Kailemia, 2016). Chomsky (2012) is most clinical when he
31 observes how, apropos of the 'peace process'
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41 The term process refers to what the US government is doing- in the cases
42 mentioned; this is to block international efforts to seek peace... The peace
43 process is limited to US initiatives, which call for a unilateral US-determined
44 settlement with no recognition of Palestinian national rights. That is the way it
45 works (2012: 65).
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51 The point Chomsky is trying to make is that, under today's rule by a single superpower,
52 only one type, one definition, of violence- the one the US recognises- is acceptable:
53 Everything else (from 'targeted' killings, to wars, to injustices) are the 'cost of doing
54 good in a dangerous world'- the unintended, collateral damage (Zizek, 2009; Kramer
55 and Michalowski, 2005; Lippens, 2004). Hayek, invoking the economists' *lingua*, refers
56 to this as 'externalities'; that is, the logic of business in which 'actions that are not
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1 manifestly intended to cause harm to others cannot become the subject of rules of
2 conduct' (Hayek 1973: 101). In practice this implies, as Hayek argues, that 'some harm
3 knowingly caused to others is even essential for the preservation of spontaneous order',
4 in the same sense, for example, the law cannot prohibit 'the setting up of a new business
5 even if this will lead to the failure of another' (Hayek 1973: 102). In this articulation, law
6 and legality incorporate a range of conflicting expectations so that the prerogative is to
7 decide which one prevails. This experimental approach to business is not harmful in
8 theory, especially when, as Ruggiero and South (2013) apropos of Hayek (1973) show,
9 it is not (always) possible or desirable to prevent all actions which will harm others but
10 only certain kinds of actions. The problematic is when this justification for the necessity
11 or desirability of harm is accompanied by a view the entitlement of others as a subject
12 of constant review and change. In the same way that the purpose of 'externalization', in
13 Hayek's (1973: 107) words, is 'the establishment of the precise boundaries within
14 which action is acceptable', the purpose of 'externalization' in international justice
15 (including ecosystem justice) is the demarcation of a range of 'objects over which only
16 particular individuals are allowed to dispose and from the control of which all others
17 are excluded' (Hayek 1973: 107).

18 The genius of Hayek is thus the distinction he makes between *meum* and *tuum* ('mine'
19 and 'thine'); by drawing boundaries, the aim of the law is merely to prevent, as much as
20 possible, the actions of different individuals from interfering with each other. The
21 problem here- and important for a contextualized approach to 'international crimes- is
22 that the law cannot be concerned with the effects of such actions on different
23 individuals, so that justice should not be concerned with the results of the various
24 transactions but only with whether the transactions themselves are fair. Harm against
25 humans and the environment, therefore, may be a *fair outcome* of economic initiative;
26 or, 'perpetration of violence', say over stolen elections, should be prosecuted as buying
27 and using a machete (or harming groups for violence)- and not having had your land
28 stolen and reallocated to collaborators of the colonial regime, for example.

29 This is the wall that recent prosecutions of 'masterminds' of crimes against humanity in
30 Kenya hit: Although the Office of the Prosecutor (OTP) endeavoured (correctly, as per
31 the terms of her brief) to present the cases as the conflicts between ethnic groups each
32 seeking to preserve or acquire power, there was little context to how this power has
33 been acquired, lost, or preserved in the post-colonial state (see also Wrong, 2009;
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1 Kailemia, 2016). What this means is that any engagement with the subjective violence of
2 gang rapes and machetes is only complete when it also adequately engages with the
3 crime *in toto*- with the crime in question as a form of 'produced immorality' (Jamieson,
4 1999), as a form of and the result of 'social exclusion'. As Jamieson argues apropos of
5 the Rwandese genocide, the near-elimination of Tutsis (by extremist Hutus) was not
6 merely a spontaneous eruption of ethnic hatred (say a response to the assassination of
7 president Habyarimana) but something more sinister:
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13 Genocide is a project of elimination which involves extensive planning,
14 coordination (and allocation of resources) by a few, and implementation by
15 many. The publicly articulated and legitimizing arguments for such elimination
16 normally identifies the annihilation of a particular targeted 'outsider' group as a
17 rational process that will contribute to 'public good', that is of the inside group'
18 (1999: 135).
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24 ***'Living in the end times'; Post-political bio-politics***

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27 Alongside this logic, the international system's articulation of the 'public good' we
28 should all desire, together with its 'insiders' and 'outsiders', has been diagnosed by
29 Zizek (2008) as '*post-political bio-politics*'; that is, a type of (international) politics which
30 claims to 'leave everything behind' (old ideological struggles, old injustices...) to achieve
31 the primary goal of the efficient administration of life (pp. 34). The purpose of post-
32 political bio-politics, Zizek argues, is objectification of social life, so that it can be
33 administered through fear: Instead of radical emancipation, the political subject is
34 encouraged to accept and move on (forget apartheid, forget the stolen money in
35 offshore accounts, just create a conducive environment for investors, acquire new
36 voting machines...). Conversely, post-political bio-politics deploys fear as its mobilizing
37 principle (in the interests of the ruling elites): fear of immigrants, fear of the other tribe,
38 fear of crime (and especially terrorism, nowadays), fear of godless sexual depravity etc.
39 Thus, in the last decade the big events have been the rise of right wing parties in Europe,
40 on the one hand, and the rise of so-called tribal conflicts in parts of Africa (Kailemia,
41 2016). In this post-political discourse the 'other', the outsider, is to be put at a distance,
42 not embraced. (This, perhaps, explains the liberal obsessions with charity: For 5p a day,
43 we can clothe the children in Congo- or give drinking water to poor Somali- as long as
44 the subject of our charity lives with all the consequences of outsourced harms ((from
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our consumption patterns)) and does not escape his environment into ours.) This means that the other is at once the object of our distance affection, which of course dissipates the moment the 'other' ceases to be a distant fantasy, materializing in our shores in the traumatizing figure of a neighbour (refugee, asylum seeker, job seeker...). Apropos of this 'distance love', Žižek reads a parallel with 'outsourced international justice' on which post-political bio-politics hinges:

That of the reduction of humans to 'bare life', to *homo sacer*, that so-called sacred being who is subject of expert caretaking knowledge, but is excluded, like prisoners in Guantanamo bay, or Holocaust victims, from all rights' (2012: 35)^{xxii}.

Žižek is not alone: Criminologists (for example Crelistein, 2003; O'Reilly, 2005; Lippens, 2004; Kramer and Michalowski, 2005; Aas, 2007; Gros, 2003) see homology between this logic of exceptionalism and globalization of international criminal justice. Crelistein demonstrates how torture- which is a violation of Geneva protocols and the Rome Statute- has been 'outsourced', that is left, to the (Third World) allies of the US which can do it without worrying about legal problems or public protest- or where there are guarantees to 'allies' of US veto in the UNSC. Here, neo-liberal values in the west are sustained against the background of carceral archipelagos such as Guantanamo Bay and Diego Garcia where the global policeman can do to others what it would not consider doing to itself (Žižek, 2010, 2014; Jamieson and McEvoy, 2005).

But, *Mutatis mutandis*, the same can be said of the construction the African 'other', not only by the international powers, but, surprisingly, by the African Union- an elite club of African leaders which meets regularly to elect one of them as the chairman of Africa, and to plot ways of protecting one another. The AU's apparent obsession with the ethnicities of the indicted deters the proper perspective on; firstly, the hypocrisy of wanting to appropriate the 'colonial immunity' (Chomsky, 2014) allegedly enjoyed by so-called major powers (Russia, China, US and their protégés); secondly, the 'invisibility' of the internally displaced people, such as Kenyan victims of alleged crimes against humanity who are still languishing in 'IDP' camps?^{xxiii} When the AU at the urging of the Kenyan president convened an 'extraordinary session' of the AU to deliberate on the continent's relationship with the ICC (for example in February 2016 where a decision to commence the block's pull-out from the court's membership was agreed) shouldn't the

1 focus rather be on the visible contrast between the plight of victims of state crimes
2 across Africa, with the complaint by the incoming chairman of that block that
3 'Elsewhere in the world, many things happen, many flagrant violations of human rights,
4 but nobody cares'^{xxiv}? It is as if the debate on the future of the ICC has degenerated into
5 a 'pissing contest' – who should be allowed to abuse the process more, rather than what
6 should be done to ensure none of the perpetrators get away with their crimes^{xxv}.
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11 Perhaps the ICC's Achilles' heel in Africa is that it has attempted to offer a juridical
12 solution to a political problem that reaches beyond the activity of the visible agents
13 whom it is possible to drag into the courts. By contrast, the violence staged over
14 elections is the result of wider, and deeply seated, problems of the post-colonial state's
15 political economy (Mamdani, 2001; Jamieson, 1999). This is not to deny that the ICC can
16 be active in prosecuting such crimes, or that the ICC's efforts are in vain, until all the
17 other forms of violence have been resolved: Rather, it is an argument that the ICC is only
18 a part of the solution to the violence- in this instance it is only effective against one type
19 of it. Actually, in equipping the ICC with adequate teeth to deal with the gravest
20 atrocities, the court's framers were also aware that treaty ratification would be difficult
21 unless certain limitations were in place to assuage the concerns of states with prior
22 prolonged periods of conflict - or those which through other apparatus, such as 'Truths
23 and Reconciliation Commissions', had managed to put their demons to rest (Stanley,
24 2005; Mamdani, 2001).
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40 Unfortunately, however, this also implies that, even for logistical reasons alone, it is
41 impossible and/or unnecessary to prosecute most instances of systematic human rights
42 violations by states, even where they are carried out under conditions which should
43 require referral to the ICC or the OTP's *motu proprio*. In respect of the Kenyan cases
44 before the ICC, although the country's ethnic cleansing history stretched way back to
45 post-independence Kenya (Anderson, 2005; Wrong, 2009) the details of the systematic
46 use of the electoral cycle for rape and displacement of population can only provide
47 contextual background- and cannot be substantive evidence of the involvement of the
48 indicted (in previous rounds of ethnic clashes), as Fayal Gaynor, counsel for victims has
49 repeatedly showed in the trial of William Ruto and Joshua Sang^{xxvi}.
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1 The point we should not miss is how the effectiveness of the ICC is hindered by those,
2 like the AU, the US (and some other members of the UN Security Council), are wont to
3 lend support to the court- or to stand out of its way- only whenever such help is in line
4 with or does not threaten their national interest.
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7 **Conclusion**

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10 Harvey (2011:80), diagnosing the neo-liberal condition observes that:

11 The drive towards market freedoms and the commodification of everything can
12 all too easily run amok and produce social incoherence. The destruction of forms
13 of social solidarity leaves a gaping hole in the social order. It then becomes
14 peculiarly difficult to combat anomie and control the resultant anti-social
15 behaviours such as criminality. (Harvey 2011: 80)
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18 Today, in turn, we should reflect on the ways in which social incoherence extends to
19 forms of despoilation and acts that, as Walters (2010: 181) puts it, 'create devastating
20 conditions for the lives of local people', but, yet involve the condoning, denial and
21 'business as usual' stance to the suffering and victimization of the 'other'. When we do
22 this, the inevitable conclusion is that in order for universal international criminal justice
23 to be secured, the logic of 'insiders' and 'outsiders' mapped above (in the shape of
24 objective and symbolic violence) must be challenged, and ultimately destroyed. The
25 tribal logic of shielding 'our own', whether practiced by the African Union or by the US,
26 or by corporations, is deleterious to equality in international criminal justice practice.
27 The idea that one's citizenship of the world can determine whether the good that comes
28 her way is justified, or whether the bad that comes her way is a part of 'the cost of
29 maintaining order' has been described above. But it is unacceptable.
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ⁱ The 2007–08 Kenyan crisis was a political, economic, and humanitarian crisis that erupted in Kenya after incumbent president Mwai Kibaki was declared the winner of a disputed election, held on December 27, 2007. Supporters of Kibaki's opponent, Raila Odinga, alleged electoral manipulation and took to the streets in so-called 'mass action'. The ensuing violence left more than 1300 people dead, and close to 650000 internally displaced. 6 people (nicknamed the 'Ocampo' Six) including the present president Uhuru Kenyatta and his deputy- formerly on opposite sides of the violence- were indicted by the International criminal court for crimes against humanity. All the cases have 'collapsed', after a collective pre-trial and trial period of 5 years. The cases have become a case study for the ICC's relationship with Africa, exposing the positionalities of global powers when it comes to the business of the ICC, as Kailemia (2016) argues.

ⁱⁱ On the 7th and 8th of April 2011 the Pre-Trial Chamber of the International Criminal Court (ICC) convened to hear for the first time in the Hague the six individuals of the Kenyan Situation suspected of Crimes against Humanity. These came to be 'known as the 'Ocampo Six' following a public naming by the then prosecutor of the ICC, Moreno Ocampo. These six suspects were: William Samoei Ruto (Current vice president); Henry Kiprono Kosgey; the then member of Parliament and Chairman of the ODM Party; Joshua Arap Sang, Head of Operations at Kass FM in Nairobi, Kenya; Francis Kirimi Muthaura, the then Head of Public Service and Secretary to the Cabinet; Uhuru Muigai Kenyatta (Now president, then the deputy Prime Minister and Minister of Finance, and; Mohammed Hussein Ali (then the commissioner of police).

iii My departure from recent accounts (including Mamdani's ((2001)) and Jamieson ((1999)) is that, in privileging the 'symbolic' (which we turn to shortly) – in their reading of the visible divisions of 'Hutu' and 'Tutsi', for example- they miss precisely how colonialism, as the organizing form of 'othering' par excellence, was very much about the structures of the economy, so that the symbolic, as important as it was, was nonetheless the means to the end; the management of the colonial 'rape' of the African economy.

iv See Marx, Karl (1978) Collected works volume 10, London, Lawrence and Wishart.

v See: <http://www.bbc.co.uk/news/world-africa-33269126>

vi See the full statement at: www.state.gov/r/pa/prs/ps/2015/06/243793.htm

vii http://www.nytimes.com/2015/07/30/world/middleeast/report-cites-possible-war-crimes-in-israeli-hunt-for-ambushed-soldier.html?_r=0

viii See <http://uk.reuters.com/article/2015/06/15/us-africa-summit-bashir-icc-idUSKBN00U0K420150615>

ix The most pronounced criticism has been on the question of national sovereignty: The African Union (AU) has specifically opposed indictments of sitting heads of state^{ix} while global powers, including the United States, Russia and China, have refused to ratify the Rome Statute^{ix} on fear that the court could be used for politically motivated prosecutions of their officials or soldiers working outside their borders.

*<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/10082819/International-Criminal-Court-is-hunting-Africans.html>

^{xi}see <http://www.capitalfm.co.ke/news/2013/10/icc-toy-of-declining-imperial-powers-uhuru/>

^{xii} To be fair, the ICC has what could, for want of a better phrase, be loosely referred to as 'inbuilt inconsistencies', or windows of abuse, such as how the court should deal with supra-national entities, such as terrorist organizations or ethnic militias. We should recall the difficulty alluded above in our reading of the works of Stanley (2005) on 'juridical othering' (especially the use of militias, or 'special forces') and O'Reilly's (2010) discussion of 'private contractors'. It is a given that, due to the nature of intentional crimes, and how they come to the attention of the ICC (via UNSC referral, Own state referral or the OTP's *motu proprio*) there is a major grey area whereby appendages of a regime can carry out major violations of international law camouflaged as 'common criminality'. A notable post-Rome Statute resolution of this conundrum is the indictment of senior leadership of the Janjaweed militia and Sudanese officials in the case of War crimes in Darfur presently before the ICC.

^{xiii} As others have pointed out, criticism of the court should also be put into context: ICC operation must be understood within the context of the court's recent creation, administrative and personnel challenges, legal impediments imposed by the Roma Statute, and external pressure to prosecute as many cases as possible in order to satisfy its value-oriented goal of guaranteeing lasting respect for and the enforcement of international justice (Basiouni, 2005)^{xiii}. As Basiouni shows, these factors have made the choices of the prosecutor largely inevitable, although a strong case can be made for fundamental future reform of OTP operation. Space does not permit an exhaustive appraisal of the ICC's effectiveness (or lack thereof) when it comes to non-state actors. Perhaps this is fine for these purposes, since this is the area in which the ICC has received the least criticism from African states: There is little criticism of the prosecution of the Congolese Bosco Ntagada or the arrest warrant for the LRA's Joseph Kony, for war crimes.

^{xiv} <http://mondoweiss.net/2015/01/palestinians-consequences-settlements>

^{xv} The U.S. supplies more than \$400 million annually to the Palestinian Authority, but Israel has, following Palestine's accession to the ICC, frozen a monthly transfer of some \$120 million in tax revenues it collects for the Palestinians. This move was criticised by the EU as a breach of the 1993 Oslo accords.

^{xvi} <http://uk.reuters.com/article/2015/01/19/us-usa-israel-palestinians-idUSKBN0KS24Z20150119>

^{xvii} <http://uk.reuters.com/article/2015/01/19/us-usa-israel-palestinians-idUSKBN0KS24Z20150119>

^{xviii} See: <https://www.globalpolicy.org/security-council/index-of-countries-on-the-security-council-agenda/israel-palestine-and-the-occupied-territories.html>

^{xix} See: <http://www.brookings.edu/blogs/africa-in-focus/posts/2013/10/17-africa-international-criminal-court-kimenyi>

^{xx} <http://www.usnews.com/opinion/blogs/world-report/2014/11/13/israel-is-the-middle-east-ally-the-us-cannot-lose>

^{xxi} <http://www.newrepublic.com/article/120953/senators-threaten-cut-palestinian-funding-over-icc-membership>

^{xxii} As Kailemia (2016) argues, the implications of this logic to post-Rome Statute international criminal justice is that states are now competing to appropriate to themselves this incivility or that the services of transnational and supra-national actors are required in order to circumvent state obligation under international law. Where this quest goes awry, and the ICC is invoked, two scenarios ensue: Based on positionalities of the international political pecking order there may be requirement to comply with the court, to dismiss the court as 'out of step'. (It helps if you are number of countries.) Alternatively, states can cut lose and hand-over the 'baddies'. The conflicts Africa, under the leadership of the AU, is having with the court have to do with the first scenario. On the second scenario, Africa's relationship with the ICC is a template of the challenges of a globalizing world, which is being driven (as Lippens, 2004) appropriately claims, by a neoliberal logic of empire: For some parts of the world, post-cold-war narrative of universal justice is an ambition built on the back of 'outsourced' illiberalism (Chomsky, 2014; Zizek, 2014).

^{xxiii} See: <https://research.unsw.edu.au/projects/investigating-health-needs-vulnerable-people-living-internally-displaced-persons-idp-camps>

^{xxiv} <http://www.theguardian.com/world/2016/feb/01/african-union-kenyan-plan-leave-international-criminal-court>

^{xxv} The other point not to be missed is how most of the critiques of the ICC homologise its many arms: Isn't the critique of 'race hunting' not more a critique of the priorities of the Office of the prosecutor, than, say, the presidency- or the different pre-trial and trial chambers? In fact, while criticism of the court's 'selective justice' was raging within the ranks of the AU, the pre-trial chamber (in the Kenyan case) dismissed the cases of 3 of the co-accused (Mr Muthaura, Mr Hussein and Mr Kosgey), while Mr. Kenyatta's case was withdrawn by the OTP shortly before it went to trial in December, 2014.

^{xxvi} In the case of Kenya, certainly, the post-election violence of 2007 was a continuation of previous inter-ethnic conflicts, which had flared up in the past, encouraged by Arap Moi's single-party dictatorial regime. Pejoratively referred to as 'land clashes', they had become state-sponsored land-grabs in which one community was evicted out of their farms around election-time every 5 years. Invariably, these were members of the Kikuyu ethnic group which were allied to the political opposition during the 2007 conflict, but which were perceived as part of the 'eating' group- owing to one of their own occupying power in 2007^{xxvi}.